STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF SAMUEL ALEXANDER, by MARJORIE WILLIAMS, Personal Representative, Plaintiff-Appellant,	UNPUBLISHED December 27, 2011
v	No. 297593 Calhoun Circuit Court
TRILLIUM HOSPITAL, and DR. RAMANA CHENNUBHOLTA, Defendants-Appellants.	LC No. 1999-004577-NH

Before: M.J. KELLY, P.J., and OWENS and BORRELLO, JJ.

PER CURIAM.

In this action alleging medical malpractice, plaintiff appeals the circuit court's order denying her motion to reinstate the case after the lifting of a bankruptcy stay. We reverse and remand.

Plaintiff filed suit against defendants in December 1999. As personal representative of the estate of Samuel Alexander, plaintiff brought this claim alleging medical malpractice after Alexander's death from pancreatitis on September 6, 1998. Defendant Ramana Chennubholta was the emergency department physician who treated Alexander at defendant Trillium Hospital.

Discovery was conducted and trial was scheduled for February 7, 2002. Chennubholta's insurance carrier filed for bankruptcy prior to the start of trial. An automatic stay was entered on February 13, 2002, when Chennubholta's insurance carrier was declared insolvent. Although an additional order was not formally entered, an automatic stay also came into effect when Trillium declared bankruptcy two days later on February 15, 2002. The trial court did not enter an order administratively closing the case after notification of the bankruptcy stay.

On October 27, 2004, plaintiff filed a motion in the bankruptcy court seeking relief from the automatic bankruptcy stay. In response, Trillium offered on November 1, 2004, to stipulate to set aside the stay in order to allow plaintiff to proceed with the instant medical malpractice claim. The bankruptcy court dismissed the motion when neither party appeared for the hearing.

Plaintiff filed a stipulation and order for relief from the automatic stay in bankruptcy court on December 16, 2008. The bankruptcy court signed the order on December 17, 2008, as

to Trillium. Chennubholta was served with a copy of this order on April 24, 2009. While the circuit court case was subsequently reassigned to a new judge on January 4, 2005, there was no further action in the circuit court until plaintiff filed the motion to reinstate in February 2010.

The circuit court denied plaintiff's motion and dismissed the action, finding that the bankruptcy stay was lifted on December 17, 2008, the bankruptcy was closed out in March or April 2009, and plaintiff failed to file a motion to reinstate the case until February 2010. The circuit court reasoned that plaintiff filed the instant motion more than 30 days after the stay was lifted, in contravention of 11 USC 108(c)(2).

Plaintiff argues on appeal that the trial court erroneously applied 11 USC 108(c)(2) to the facts of this case. We agree.

We review a trial court's decision on a motion to reinstate for an abuse of discretion. *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 138; 624 NW2d 197 (2000). An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes. *Radeljak v Daimler-Chrysler Corp*, 475 Mich 598, 603; 719 NW2d 40 (2006).

11 USC 108 (c)(2) states:

> Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of--
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> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > (2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

Here, plaintiff filed a motion to reinstate as opposed to filing a motion to set a trial date which set the stage for some procedural confusion. Although plaintiff and the trial court acted as though the case had been administratively closed, there is no evidence in the record that the case was ever administratively closed following the bankruptcy stay. Because the case remained active, the trial court was partially responsible for the delay when the bankruptcy stay was lifted and a trial date was not set. The case in effect "disappeared" from the court's docket. This created a situation where the parties were waiting for a trial notice, but due to the trial court's unwritten assumed administrative closure, the trial court would never have issued such a trial notice.

It is clearly in a plaintiff's interest and his responsibility to prosecute his case, see e.g. *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 145-146; 624 NW2d 197 (2000), and it should have been apparent the trial court was taking no action to set a trial date before fourteen

months elapsed following the lifting of the stay. However, without an official administrative closure of the case, notice of lifting of the bankruptcy stay also acted as notice to the court that a trial date should be set. Although plaintiff's inaction following the lifting of the bankruptcy stay is regrettable, we conclude that the appropriate solution under these unusual facts is to reverse and remand for a trial date to be scheduled.

We also conclude that the doctrine of laches is not applicable to this case. This doctrine is concerned with unreasonable delay that results in "circumstances that would render inequitable any grant of relief to the dilatory plaintiff." *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 503-504; 608 NW2d 105 (2000). The application of the doctrine of laches requires the passage of time combined with a change in condition that would make it inequitable to enforce the claim against the defendant. *Gallagher v Keefe*, 232 Mich App 363, 369; 591 NW2d 297 (1998). Laches does not apply unless the delay of one party has resulted in prejudice to the other party. *City of Troy v Papadelis (On Remand)*, 226 Mich App 90, 97; 572 NW2d 246 (1997). "'It is the effect, rather than the fact, of the passage of time that may trigger the defense of laches.'" *Id*., quoting *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 578; 485 NW2d 129 (1992). The defendant has the burden of proving that the plaintiff's lack of due diligence resulted in some prejudice to the defendant. *Gallagher*, *supra* at 369-370. [*Yankee Springs Twp v Fox*, 264 Mich App 604, 611-612; 692 NW2d 728 (2004).]

Here, there was a delay of almost eight years between the first bankruptcy stay in February 2002 and plaintiff's motion to reinstate this matter in February 2010. However, once the stay was lifted in December 2008, the resulting delay was in part attributable to the trial court's failure to set a trial date. Plaintiff's lack of action cannot be deemed "dilatory," and it would not be equitable to deny plaintiff her case where the court's handling of the matter contributed to the delay.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Donald S. Owens
/s/ Stephen L. Borrello